

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

<b>CSX TRANSPORTATION, INC.,</b>	)	
<b>individually and on behalf of NORFOLK</b>	)	
<b>&amp; PORTSMOUTH BELT LINE</b>	)	
<b>RAILROAD COMPANY,</b>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
<b>v.</b>	)	<b>No. 2:18-cv-530-MSD-LRL</b>
	)	
<b>NORFOLK SOUTHERN RAILWAY</b>	)	
<b>COMPANY, <i>et al.</i>,</b>	)	
	)	
<i>Defendants.</i>	)	

**NORFOLK SOUTHERN RAILWAY COMPANY’S  
MEMORANDUM IN SUPPORT OF MOTION TO STAY  
DISCOVERY ORDER PENDING RULING ON OBJECTION**

Defendant Norfolk Southern Railway Company (“NSR”), by counsel, for its Memorandum in support of its Motion to Stay Discovery Order Pending a Ruling on Objection<sup>1</sup>, states as follows:

**ARGUMENT**

On September 8, 2020, Magistrate Judge Leonard entered an Order (ECF No. 237) (the “Discovery Order”) allowing Plaintiff CSX Transportation, Inc. (“CSXT”) to take four additional depositions after the close of CSXT’s discovery period. The Discovery Order required that the depositions occur within 60 days, or by November 7, 2020. On September 11, 2020, NSR timely filed its Objection to the Discovery Order (ECF No. 240) (the “Objection”). On September 25, 2020, CSXT filed its Opposition to NSR’s Objection (ECF No. 241), and contemporaneously herewith NSR is filing its Reply in Support of its Objection (ECF No. 243).

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<sup>1</sup> Pursuant to Local Rule 7(E), counsel have conferred and CSXT does not consent to the Motion to Stay Discovery Pending a Ruling on Objection.

As of the filing of this Motion, the parties are in the process of scheduling the depositions in the event that this Court upholds the Discovery Order. However, NSR's Objection would become moot if the depositions were forced to occur pursuant to the Discovery Order notwithstanding NSR's Objection.

In order to preserve the *status quo ante* pending a ruling on the Objection, NSR requests that this Court stay the effectiveness of the Discovery Order until such time as this Court makes a ruling on NSR's Objection. If the Court overrules the Objection, then the depositions can occur promptly. If the Court sustains the Objection and vacates the Discovery Order, however, then the depositions would not move forward, at least pursuant to the current Discovery Order. It would moot the Objection, however, if the parties were required to move forward with the depositions under the timeframe outlined in the Discovery Order before this Court had ruled on the Objection.

Given this matter is not set for trial, no party will suffer prejudice from such a stay. As a practical matter, the parties have ample time to conduct the depositions. On the other hand, if the Court ends up vacating the Discovery Order after the depositions have already occurred, NSR will suffer prejudice in the form of the unnecessary additional expense and business dislocation from the depositions, particularly as two of the deponents are senior executives at NSR who have already sat for day-long depositions in this case.

Counsel for NSR has conferred with counsel for CSXT regarding this request for a stay. CSXT's counsel states that CSXT opposes the motion.

### **CONCLUSION**

For these reasons, NSR respectfully requests that the Court enter an order staying the effectiveness of the Discovery Order, in order to preserve the *status quo ante* pending resolution of NSR's Objection to the Discovery Order.

Date: October 1, 2020

Respectfully submitted,

**NORFOLK SOUTHERN RAILWAY COMPANY**

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